

REMARKS

Claim 1, the only independent claim, has been amended to make clear that the fitted shells do not enclose a lumen and that the first fluid is in communication with all surfaces of the fitted shells. Support for this amendment is found in paragraph [0009]: "The fluid is able to move within the outer lumen and envelop the fitted shells." See also paragraph [0028] which explains fluid in the outer lumen flowing into the spaces between the shells. No new matter has been added.

Paragraph [0022] of the specification has been represented with the strikeout and interlineation removed. Technically, these are not amendments since no change in wording has been made.

The examiner has rejected claims 1-5, 7-15, 14, 19, and 20 as fully met by Chaglassian U.S. Patent No. 4,773,909 (hereinafter "the '909 patent"). The examiner states:

Claims 1-5, 7-15, 14, 19 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Chaglassian 4,773,909 which discloses the invention as claimed comprising: a first shell/envelope (2) having an exterior surface, and interior surface, and enclosing a lumen; a second shell (4) having an exterior surface, an interior surface, and enclosing a lumen; and one or more fitted shells situated between the exterior surface (3) of the second shell and the interior surface of the first shell; wherein the fitted shells are adjacent to each other (see col. 2, lines 40-41); wherein the fitted shells comprise an innermost fitted shell and an outermost fitted shell, wherein the inner most fitted shell is adjacent to the exterior surface of the second shell and the outermost fitted shell is adjacent to the interior surface of the first shell; wherein the fitted shell is generally dome-shaped (col. 2, lines 54-58) and has a diameter measurement and projection measurement; including one or more holes/perforation (12a); made of biocompatible non-porous material; wherein the lumen enclosed by the first shell is filled with the first fluid enveloping at least one of the fitted shell (col. 2, lines 60-67). The intended use recitation/functional language 'is able to accommodate a first fluid...is able to accommodate a second fluid...etc.' carries no patentable weight in the absence of any distinguishing structure. Chaglassian clearly discloses the structure as

claimed and is found to be inherently capable of performing the functions.

Reconsideration of the amended claims is respectfully requested.

The added claim limitation clearly distinguishes the '909 patent. At column 2, lines 40 et seq., the patent describes multiple lumens, i.e., bi-lumens, tri-lumens, and multiple lumen implants. The tri-lumen or multiple lumen implants are distinguishable. The lumens of the '909 patent enclose a fluid volume. Applicant discloses and claims only two lumens. The outer lumen contains one or more shells that do not enclose a fluid volume. All surfaces of the one or more fitted shells are enveloped by the same fluid. In this way, the outer lumen can be filled with a low viscosity liquid and yet not be susceptible to sloshing and wave motion.

The prior art does not suggest multiple fitted shells in a lumen with liquid in communication with all surfaces of the fitted shells.

The examiner has rejected claims 6, 13, and 17-19 as being unpatentable (35 U.S.C. §103) over Chaglassian ('909). The examiner states:

Claims 6, 13, 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chaglassian 4,773,909. Chaglassian has been disclosed above noting figures 1-2, however, the inner lumen of the second shell is filled with a gel. It would have been obvious to one having ordinary skill in the art at the time the invention was made to exchange the gel into *any* liquid formulation because Chaglassian expressly discloses in column 2, lines 63-65 that *any* other typical liquids which are compatible with the human body may be utilized as long as the consistency and viscosity of the implant material closely simulates the contours and characteristics of the human breast (see col. 3, lines 62-65).

Reconsideration is respectfully requested.

For the reason that the '909 patent does not suggest the limitation of claim 1, it all the more so does not suggest the limitation of claims dependent thereon.

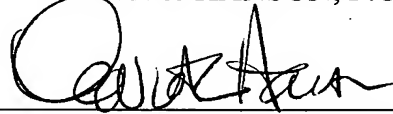
Application No. 10/649,558
Amendment dated May 28, 2004
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Attorney Docket No. 94-030576

In view of the foregoing amendments and remarks, it is urged this case is now
in condition for allowance.

Respectfully submitted,

WEBB ZIESENHEIM LOGSDON
ORKIN & HANSON, P.C.

By



David C. Hanson, Reg. No. 23,024
Attorney for Applicant
700 Koppers Building
436 Seventh Avenue
Pittsburgh, PA 15219-1818
Telephone: 412-471-8815
Facsimile: 412-471-4094
E-Mail: webblaw@webblaw.com